REMARKS

Claims 1 - 7 and 15 - 21 have been canceled without prejudice. Claims 8, 14, 22 and 28 has been amended. Claims 8 through 14 and 22 through 28 are now pending in this application.

In response to the restriction requirement, applicant affirms the election without traverse of Group II, claims 8-14 and 22-28. Accordingly, Claims 1 - 7 and 15 - 21 have been canceled without prejudice.

Claims 8 - 11 and 22 - 28 were rejected under 35 U.S.C 102(b) as being anticipated by Cherney (5,466,326).

Claim 8 recites a processor operable to automatically select a heating time the heating time being the time in which heat is applied to the heat sealable material, the heating time seLEtion being based on one or more sealing parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time. A heating device is claimed for applying heat to a portion of the heat sealable material according to a processor controlled sealing routine that utilizes the automatically selected heating time.

Cherney (5,466,326) discloses a continuous motion hot air sealer having an integrated controller 28 where the amount of heat applied to the area of film is varied in accordance with the velocity of the film. For a given film, two calibration points are determined T2, T1 corresponding to temperature set points at low and high

velocity V1, Vh where seal quality is determined acceptable on from trial and error testing. These values are stored and a straight line approximation of the temperature set point is determined for any (i.e. based on) velocity between V1 and Vh by the controller. (please see column 7, lines 30 - 56). Thus, for any velocity selected between V1 and Vh, the controller sets the temperature setpoint and controls power output with a stand alone controller or PID loop to maintain the temperature setpoint (please see column 7, lines 21 - 30, column 6, lines 58 - 64).

Nowhere in Cherney (5,466,326) is there a disclosure or suggestion of a processor operable to automatically select a heating time (the time in which power is applied to the heat sealable material), the heating time based on one or more sealing parameters as claimed in claim 8. Instead, Cherney (5,466,326) discloses selection of a setpoint based on feed velocity. The Cherney controller never selects the heating time itself, and instead selects the temperature setpoint and velocity, which is different than automatically selecting a heating time being the time in which power is applied to the heat sealable material as claimed in claim 8. Cherney (5,466,326) discloses setting a temperature setpoint which is controlled in a closed loop fashion which is different than selecting a heating time which simply applies power for a specified duration of time as claimed. No where in Cherney (5,466,326) is there a disclosure or suggestion of automatically selecting a heating time based on one or more sealing parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time as claimed in claim 8.

Instead, Cherney (5,466,326) discloses selecting a temperature set point based on a straight line approximation between a low speed temperature set point and a high speed temperature setpoint which is different than automatically selecting a heating time based on one or more sealing parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time as claimed in claim 8. Moreover, there is simply no disclosure whatsoever in Cherney of the heating device being operated (applying heat to the heat sealable material) according to the processor routine utilizing the selected heating time. In Cherney, heating time is not selected but merely the result of operating the sealer for the selected speed and temperature, and certainly is never used in any routine controlling the heating device. The features of claim 8 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 8 is patentable over Cherney (5,466,326).

In addition to the features of claim 8, claim 9 recites where the processor is operable to determine values for the minimum heating time and maximum heating time parameters based on whether a first sealing operation of a batch is being performed. No where in Cherney (5,466,326) is there a disclosure or suggestion of where the processor is operable to determine values for the minimum heating time and maximum heating time parameters based on whether a first sealing operation of a batch is being performed. Instead, Cherney (5,466,326) discloses a selecting a temperature set point based on a straight line approximation between a low speed temperature set point and a high speed temperature setpoint which is

different than determining values for the minimum heating time and maximum heating time parameters as claimed in claim 9. Instead, Cherney (5,466,326) is silent on making any alterations to the control law based on whether a first sealing operation or any subsequent sealing operation of a batch is being performed as claimed. The features of claim 9 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 9 is patentable over Cherney (5,466,326).

Claim 10 depends upon claim 8. For the reasons set forth above relating to claim 8, the features of claim 10 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 10 is patentable over Cherney (5,466,326).

In addition to the features of claim 10, claim 11 recites where the processor is operable to compare the automatically selected heating time to a minimum sealing time and a maximum sealing time determined by the thickness of the heat sealable material. No where in Cherney (5,466,326) is there a disclosure or suggestion of where the processor is operable to compare the automatically selected heating time to a minimum sealing time and a maximum sealing time determined by the thickness of the heat sealable material. Instead, Cherney (5,466,326) discloses selecting a temperature set point based on a straight line approximation between a low speed temperature set point and a high speed temperature setpoint on a trial and error basis and storing it for different thickess' of materials which is different than comparing the automatically selected heating time to a minimum sealing time and a maximum sealing time determined by the thickness of the heat sealable material

as claimed in claim 11. The features of claim 11 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 11 is patentable over Cherney (5,466,326).

Claim 22 recites a bag dispenser having a sealing device and a controller programmed to control the sealing device. A program for use by the controller is claimed for automatically selecting a sealing time for the sealing device. The sealing time is selected according to a bag count and one or more of a parameter of the sealing device according to claim 22. No where in Cherney (5,466,326) is there a disclosure or suggestion of where the sealing time is selected according to a bag count and one or more of a parameter of the sealing device according to claim 22. Instead, Cherney (5,466,326) is silent on making any alterations to the control law or temperature setpoint or speed etc.. based on bag count as claimed. The features of claim 22 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 22 is patentable over Cherney (5,466,326).

In addition to the features of claim 22, claim 23 recites where a bag count of 0 results in a first sealing time. No where in Cherney (5,466,326) is there a disclosure or suggestion of where a bag count of 0 results in a first sealing time according to claim 23. Instead, Cherney (5,466,326) is silent on making any alterations to the control law or temperature setpoint or speed etc.. based on bag count as claimed. The features of claim 23 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 23 is patentable over Cherney (5,466,326).

In addition to the features of claim 22, claim 24 recites where a bag count of other than 0 results in a second sealing time. No where in Cherney (5,466,326) is there a disclosure or suggestion of where a bag count of other than 0 results in a second sealing time according to claim 23. Instead, Cherney (5,466,326) is silent on making any alterations to the control law or temperature setpoint or speed etc.. based on bag count as claimed. The features of claim 24 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 24 is patentable over Cherney (5,466,326).

In addition to the features of claim 22, claim 25 recites where the program is operable to compare the automatically selected sealing time to a minimum sealing time and a maximum sealing time determined by a thickness of the dispensed bag. No where in Cherney (5,466,326) is there a disclosure or suggestion of where the program is operable to compare the automatically selected sealing time to a minimum sealing time and a maximum sealing time determined by a thickness of the dispensed bag. Instead, Cherney (5,466,326) discloses selecting a temperature set point based on a straight line approximation between a low speed temperature set point and a high speed temperature setpoint on a trial and error basis and storing it for different thickess' of materials which is different than comparing the automatically selected sealing time to a minimum sealing time and a maximum sealing time determined by a thickness of the dispensed bag as claimed in claim 25. The features of claim 25 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 25 is patentable over Cherney (5,466,326).

In addition to the features of claim 22, claim 26 recites where the parameter of the sealing device includes one or more parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time. No where in Cherney (5,466,326) is there a disclosure or suggestion of where the parameter of the sealing device includes one or more parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time as claimed in claim 26. Instead, Cherney (5,466,326) discloses selecting a temperature set point based on a straight line approximation between a low speed temperature set point and a high speed temperature setpoint which is different than where the parameter of the sealing device includes one or more parameters selected from the group of a minimum sealing temperature, a minimum heating time, a maximum sealing temperature, and a maximum heating time as claimed in claim 26. The features of claim 26 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 26 is patentable over Cherney (5,466,326).

In addition to the features of claim 26, claim 27 recites where values for the minimum heating time and maximum heating time parameters are based on whether a first sealing operation of a batch is being performed. No where in Cherney (5,466,326) is there a disclosure or suggestion of where values for the minimum heating time and maximum heating time parameters are based on whether a first sealing operation of a batch is being performed. Instead, Cherney (5,466,326) discloses a selecting a temperature set point based on a straight line approximation between a low speed temperature set point

and a high speed temperature setpoint which is different than determining values for the minimum heating time and maximum heating time parameters as claimed in claim 27. Instead, Cherney (5,466,326) is silent on making any alterations to the control law based on whether a first sealing operation or any subsequent sealing operation of a batch is being performed as claimed. The features of claim 27 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 27 is patentable over Cherney (5,466,326).

Claim 28 recites a bag dispenser having a bag selector for selecting one of a bag width or a bag thickness for effecting an automatic bag selection. A controller is claimed responsive to an output of the selector for programmatically determining a seal time and a heating time different from the seal time for the automatically selected bags. No where in Cherney (5,466,326) is there a disclosure or suggestion of having a bag selector for selecting one of a bag width or a bag thickness for effecting an automatic bag selection as claimed. Instead, Cherney (5,466,326) discloses different films and thickness, and establishing different calibration values for different films and thickness of a single film on the machine with no disclosure or suggestion of having a bag selector for selecting one of a bag width or a bag thickness for effecting an automatic bag selection as claimed. No where in Cherney (5,466,326) is there a disclosure or suggestion of a controller responsive to an output of the selector for programmatically determining a seal time and a heating time different from the seal time for the automatically selected bags. Instead, Cherney (5,466,326) discloses a temperature setpoint based on calibration values for a given film which is different

than programmatically determining a seal time and a heating time different from the seal time for the automatically selected bags as claimed. The features of claim 28 are not disclosed or suggested by Cherney (5,466,326). Accordingly, claim 28 is patentable over Cherney (5,466,326).

Claims 12 and 13 were rejected under 35 U.S.C 103(a) as being unpatentable over Cherney (5,466,326).

In addition to the features of claim 8, claim 12 recites where during the processor controlled sealing routine, the processor is operable to preheat the heating device for a fourth time period, and is operable to allow the heating device to cool for a fifth time period. No where in Cherney (5,466,326) is there a disclosure or suggestion of where during the processor controlled sealing routine, the processor is operable to preheat the heating device for a fourth time period, and is operable to allow the heating device to cool for a fifth time period. Instead, Cherney (5,466,326) discloses fixed temperature set points based on velocity during the sealing routine only with no disclosure or suggestion of during the processor controlled sealing routine, the processor is operable to preheat the heating device for a fourth time period, and is operable to allow the heating device to cool for a fifth time period as claimed. The features of claim 12 are not disclosed or suggested or made obvious over by Cherney (5,466,326). Accordingly, claim 12 is patentable over Cherney (5,466,326).

In addition to the features of claim 12, claim 13 recites where the fourth time period is determined from an initial temperature of the heating device and one or more

of the sealing parameters. No where in Cherney (5,466,326) is there a disclosure or suggestion of where the fourth time period is determined from an initial temperature of the heating device and one or more of the sealing parameters as claimed. Instead, Cherney (5,466,326) discloses fixed temperature set points based on velocity which is different than where the fourth time period is determined from an initial temperature of the heating device and one or more of the sealing parameters as claimed. The features of claim 13 are not disclosed or suggested or made obvious over by Cherney (5,466,326). Accordingly, claim 13 is patentable over Cherney (5,466,326).

Claim 14 was objected to as being dependent upon a rejected base claim, but indicated allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 14 has been rewritten in independent form including all of the limitations of the base claim 8 upon which it was dependent on. Accordingly, claim 14 is patentable.

Favorable reconsideration and allowance of the claims, which remain pending in this application, is respectfully requested. Should any unresolved issue remain, the Examiner is invited to call Applicant's Attorney at the telephone number indicated below.

Please charge any fee deficiency arising out from the filing of this amendment to Deposit Account Number 16-1350.

Respectfully submitted,

6/28/04

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